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EXAMINER
JEAN GILLES, JUDE

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _12 December 2005_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-87_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-87_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _26 February 2002_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

This Action is in regards to the Reply received on 12/12/2005.

Response to Amendment

1.   This action is responsive to the application filed on 12/12/2005. Claims 1-6 and

8-87 are pending, and have been rejected. Claims 1, 6, 52, 55, 82 and 85

are amended. No new claims are newly added. Claims 1-87 are pending. Claims 1-87

represent a method and system for "controlling distribution of network communications".

Response to Arguments

2.   Applicant's arguments with respect to claims 1-85 have been carefully

considered, but are not deemed fully persuasive. Applicant's arguments are deemed

moot in view of the following new ground of rejection as explained here below

        The dependent claims stand rejected as articulated in the First Office Action and

all objections not addressed in Applicant's response are herein reiterated.

        In response to Applicant's arguments, 37 CFR § 1.11(c) requires applicant to

"clearly point out the patentable novelty which he or she thinks the claims present in

view of the state of the art disclosed by the references cited or the objections made. He

or she must show the amendments avoid such references or objections."

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described
> as set forth in section 102 of this title, if the differences between the subject matter sought to
> be patented and the prior art are such that the subject matter as a whole would have been
> obvious at the time the invention was made to a person having ordinary skill in the art to which
> said subject matter pertains. Patentability shall not be negatived by the manner in which the
> invention was made.

5. **Claims 1-16, 18, 21-38, and 44-87** are rejected under 35 U.S.C. 103(a) as

being unpatentable over Geiger et al (Geiger), Patent No. 6,073,142 in view of

Crowther et al (Crowther), U.S. Patent No: 6,771,765 B1.

   Regarding **claim 1**, Geiger discloses a method for controlling distribution of electronic

messages communicated from a sender to a receiver via a communications network,

the method comprising the steps of:

(a) receiving a message intended for delivery to a recipient (col. 5, lines 58-67; col. 6,

lines 15-50);

(b) identifying a priority level corresponding to the message (column 10, lines 44-62);

(c) identifying a processing rule for the identified priority level (column 10, lines 44-62;

column 20, lines 4-20); and

(d) delivering the message to the intended recipient in accordance with the

processing rule (column 10, lines 44-62; column 20, lines 4-20; column 20, lines 21-58).

However, the processing rules for the identified priority level of Geiger is slightly

different for the characterization of the applicant.

In the same field of endeavor, Crowther discloses "...The assignment of the priority level(in this case P3) for a media request is controlled by the media gateways (e.g., media gateway 112). For example, an e-mail request from a registered customer may be assigned a higher priority level than an e-mail request from an unregistered user. The media gateway 112 specifies to the MQM, by messaging, which skillset(s) to place the e-mail request (see FIG. 5, message at reference 3). The media gateway 112 may optionally queue the request to multiple skillsets. ..." [see Crowther; column 9, lines 15-27].

Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporated Geiger's teachingsof identifying a processing rule for the identified priority level, with the teachings of Crowther, for the purpose of "...overcoming the deficiencies of conventional systems and provides the beneficial ability to define business rules that implement business communication policies for controlling the handling of e-mail messages and other data objects by a data server..." as stated by Geiger in lines 2-10 of column 3. By this rationale **claim 1** is rejected.

Regarding **claim 2**, The combination Geiger-Crowther discloses the method of claim 1, wherein step (b) is
comprises reading data from a header of the message (see Geiger; column 17, lines 16-43).

Regarding **claim 3**, The combination Geiger-Crowther discloses the method of claim 1, wherein step (c) is

performed by referencing a rule base (see Geiger; column 10, lines 44-62; column 20, lines 4-20).

Regarding **claim 4**, The combination Geiger-Crowther discloses the method of claim 1 , wherein steps (a)

through (d) are performed at a client device, the method further comprising the step of:

(e) transmitting to a network device a preference for receiving messages

having the priority level (see Geiger; column 10, lines 32-62).

Regarding **claim 5**, The combination Geiger-Crowther discloses the method of claim 1 , wherein step (b)

comprises the steps of:

(e) identifying a communications path of the message (fig. 13; column 20, lines 1-58);

(f) sampling a plurality of messages sharing the path (fig. 13; column 20, lines 1-58);

(g) determining a value for a sender metric (see Geiger; column 11, lines 12-45; column 25, lines 39-67);

(h) identifying a the priority level from a rule base for the determined value (see Geiger; column 11, lines 12-45; column 25, lines 39; and

(i) assigning the priority level identified in step [see Crowther; column 9, lines 15-27; column 8, lines 1-50] (h) to the path (see Geiger; column 11, lines 12-45; column 25, lines 39).

Regarding **claim 6**, The combination Geiger-Crowther discloses a method for

controlling distribution of electronic messages communicated from a sender to a

receiver via a

communications network, the method comprising the steps of:

(a) receiving a message intended for delivery to a recipient (see Geiger; col. 5, lines 58-

67; col. 6, lines 15-50);

(b) identifying a priority level corresponding to the message (see Geiger; column 10,

lines 44-62);

(c) identifying a prescribed delay for the identified priority level [see Crowther; column 9,

lines 15-27; column 8, lines 1-50]; and

(d) delivering the message to the intended recipient after the prescribed

delay (see Geiger; column 11, lines 12-45).

Regarding **claim 8**, The combination Geiger-Crowther discloses the method of

claim 1 , wherein step (b) comprises the steps of:

(e) identifying a communications path of the message (col. 5, lines 58-67; col. 6, lines

15-50);

(f) identifying the priority level for the identified communications path (see Geiger;

column 10, lines 44-62); [see Crowther; column 9, lines 15-27; column 8, lines 1-50].

Regarding **claim 9**, The combination Geiger-Crowther discloses the method of

claim 8, wherein step (f) comprises referencing stored data associating the

communications path with the priority level (see Geiger; column 11, lines 12-45; column

25, lines 39-67).

Regarding **claim 10**, The combination Geiger-Crowther discloses the the method of claim 2, wherein the sender specifies the priority level by selecting the priority level to be assigned to the message from a menu of priority levels displayed to the sender via a graphical user interface (see Geiger; fig. 21, item 2100); [see Crowther; column 9, lines 15-27; column 8, lines 1-50].

Regarding **claim 11**, The combination Geiger-Crowther discloses the method of claim 2, wherein the priority level is a predetermined priority level to be assigned to a plurality of messages originating from the sender (see Geiger; column 23, lines 37-67); [see Crowther; column 9, lines 15-27; column 8, lines 1-50].

Regarding **claim 12**, The combination Geiger-Crowther discloses the method for controlling distribution of network communications via a communications network, the method comprising:

identifying a plurality of network communications, each being intended for

delivery to a respective recipient, each having a respective priority level (fig. 13; (see

Geiger; column 10, lines 44-62);

causing delivery of the plurality of network communications to the respective

recipients in an order corresponding to the respective priority levels, wherein certain

of the plurality of network communications having a relatively high priority level are

delivered before certain of the plurality of network communications having a

relatively low priority level (see Geiger; column 19, lines 53-67; column 20, lines 1-58);

[see Crowther; column 9, lines 15-27; column 8, lines 1-50].

Regarding **claim 13**, The combination Geiger-Crowther discloses a method for

controlling distribution of network communications via a communications network, the

method comprising;

identifying a plurality of network communications, each being intended for

delivery to a respective recipient, each having a respective priority level (fig. 13; (see

Geiger; column 10, lines 44-62);

delaying allocation of a network connection for a network communication

having a relatively low priority level until after allocation of the network connection for

another network communication having a priority level higher than the relatively low

priority level (see Geiger; column 11, lines 7-62); [see Crowther; column 9, lines 15-27;

column 8, lines 1-50].

Regarding **claim 14**, The combination Geiger-Crowther discloses a method for

controlling distribution of network communications via a communications network, the

method comprising;

identifying a plurality of network communications, each having a respective priority

level, and a respective network path (fig. 13; (see Geiger; column 10, lines 44-62);

selectively delaying allocation of a network connection for delivering a network

communications having a certain path until after utilization of network resources no

longer exceeds a predetermined threshold (see Geiger; column 11, lines 12-45; column

25, lines 39-67); [see Crowther; column 9, lines 15-27; column 8, lines 1-50].

Regarding **claim 15**, The combination Geiger-Crowther discloses the method for

controlling distribution of network communications via a communications network, the

method comprising;

identifying a plurality of network communications, each having a respective priority level,

and a respective source address (fig. 13; (see Geiger; column 10, lines 44-62);

referencing a list of preferred customers' e-mail domains (see Geiger; column 18, lines

60-67; column 19, lines 1-23); and

delaying a network communication having a source address that does not

correspond to any e-mail domain on the list until after transmission of another

network communication having a respective source address that does correspond to

an e-mail domain on the list (see Geiger; column 18, lines 60-67; column 19, lines 1-

51); [see Crowther; column 9, lines 15-27; column 8, lines 1-50].

Regarding **claim 16**, The combination Geiger-Crowther discloses the method for

controlling distribution of network communications via a communications network, the

method comprising:

sampling network communications received from a certain sender to determine a level

of network communications having a certain characteristic (see Geiger; column 19, lines

52-67; column 20, lines 1-20; column 23, lines 5-36);

determining a priority level as a function of the level; and

assigning the priority level to other network communications received from the

certain sender(see Geiger; column 19, lines 52-67; column 20, lines 1-20; column 23,

lines 5-36); [see Crowther; column 9, lines 15-27; column 8, lines 1-50].

Regarding **claim 18**, The combination Geiger-Crowther discloses the method of claim

16, wherein the characteristic comprises undeliverability of network communication to a

respective receiver (see Geiger; column 5, lines 42-67; column 6, lines 1-57).

Regarding **claim 21**, The combination Geiger-Crowther discloses an apparatus

for controlling distribution of network communications via a communications network,

the apparatus comprising;

means for identifying a respective priority for each of a plurality of network

communications (see Geiger; column 19, lines 52-67; column 20, lines 1-20);

means for allocating network connections for delivery of network

communications, said means being configured to provide a prioritization effect

whereby connections are allocated for delivery of said plurality of network

communications in an order corresponding to respective priorities of said plurality of

network communications, a network communication having a relatively high priority

being allocated a network connection before another network communication having

a relatively low priority (see Geiger; column 19, lines 52-67; column 20, lines 1-58); [see

Crowther; column 9, lines 15-27; column 8, lines 1-50].

Regarding **claim 22**, The combination Geiger-Crowther discloses the apparatus

of claim 21, whereby said means for allocating network connections provides

unnecessary delay for allocation of a network connection for a network communication

having a relatively low priority to permit allocation of said network connection for

delivery of a network communication having a relatively high priority (see Geiger;

column 19, lines 52-67; column 20, lines 1-58)..

Regarding **claim 23**, The combination Geiger-Crowther discloses the apparatus of claim 21, wherein said delay is provided for any network communications having a certain priority (see Geiger; column 19, lines 52-67; column 20, lines 1-58)..

Regarding **claim 24**, The combination Geiger-Crowther discloses the apparatus of claim 21, wherein said delay is provided for any network communication received along a certain network path (fig. 13; (see Geiger; column 10, lines 44-62);

Regarding **claim 25**, The combination Geiger-Crowther discloses the apparatus of claim 21 , wherein said delay is provided for any network communication originating from a certain sender (see Geiger; column 18, lines 60-67; column 19, lines 1-51).

Regarding **claim 26**, The combination Geiger-Crowther discloses the apparatus of claim 21 , wherein said delay is provided for any network communication when utilization of network resources exceeds a predetermined threshold (see Geiger; column 18, lines 60-67; column 19, lines 1-51).

Regarding **claim 27**, The combination Geiger-Crowther discloses a system for controlling distribution of network communications via a communications network, the system comprising;

a mail server capable of processing network communications (see Geiger; column 5, lines 42-67; column 7, lines 4-30; fig. 1, items 102, and 106);

a device capable of determining a respective priority for each of a plurality of network communications (fig. 2, item 230; column 10, lines 32-63); and a device capable of allocating network connections for delivery of network communications, said device being specially configured to allocate network connections to provide a

prioritization effect whereby a network communication having a relatively high priority is

allocated a certain network connection before another network communication having a

relatively low priority (see Geiger; column 19, lines 53-67; column 20, lines 1-58); [see

Crowther; column 9, lines 15-27; column 8, lines 1-50].

Regarding **claim 28**, The combination Geiger-Crowther discloses the system of

claim 27, wherein said mail server is specially configured with software to act as said

device capable of determining the respective priority for each of the plurality of network

communications (see Geiger; column 5, lines 42-67; column 7, lines 4-30; fig. 1, items

102, and 106).

Regarding **claim 29**, The combination Geiger-Crowther discloses the system of

claim 27, wherein device capable of allocating network connections comprises a

hardware appliance distinct from said mail server (fig. 2, item 230; column 10, lines 32-

63).

Regarding **claim 30**, The combination Geiger-Crowther discloses a network

appliance for controlling distribution of network communications via a communications

network, the network appliance comprising;

a heuristic engine for identifying a network path for each of a plurality of

network communications received by the network appliance, and for sampling a

subset of the plurality of network communications, each network communication of

the subset having a common network path (fig. 2, items 220, and 230);

a scanner for scanning each network communication of the subset and for

determining a value for a sender metric for the network communications of the

subset (fig. 3, item 287; column 8, lines 14-67);

a rules database storing rules for delivering network communications, at least

one of the rules correlating the value to a priority level; and

a connection processor for allocating network connections for delivery of

network communications, the connection processor being configured to allocate

network connections for certain network communications in an order of priority

corresponding to the certain network communications' respective priority levels,

wherein each network communication's respective priority level is assigned

according to its respective network path, and the priority level assigned to the subset

of network communications having an identical network path (see Geiger; column 8,

lines 14-67; fig. 1, item 102, and 106; column 9, lines 4-67; column 10, lines 1-63); [see

Crowther; column 9, lines 15-27; column 8, lines 1-50].

Regarding **claim 31**, The combination Geiger-Crowther discloses the network

appliance of claim 30, further comprising a notification module, the notification module

being capable of communicating to another network appliance (fig. 4A, item 410;

column 5, lines 42-67; column 6, lines 1-57).

Regarding **claim 32**, The combination Geiger-Crowther discloses the network

appliance of claim 30, wherein the notification module is configured to communicate via

the communications network (fig. 4A, item 410; column 5, lines 42-67; column 6, lines 1-

57).

Regarding **claim 33**, The combination Geiger-Crowther discloses the network

appliance of claim 31, wherein the notification module is configured to communicate

priority level information for a corresponding network path (fig. 13; (see Geiger; column

10, lines 44-62).

Regarding **claim 34**, The combination Geiger-Crowther discloses the network

appliance of claim 31 , wherein the notification module is configured to communicate a

preference to delay network communications.

Regarding **claim 35**, The combination Geiger-Crowther discloses the network

appliance of claim 31 , wherein the notification module is configured to communicate a

request to reduce a volume of network communications directed to the network

appliance (see Geiger; column 7, lines 4-67; column 8, lines 1-59).

Regarding **claim 36**, The combination Geiger-Crowther discloses the network

appliance of claim 30, wherein the sampling is performed according to a predetermined

sampling rate (see Geiger; column 4, lines 21-39; column 23, lines 5-36).

Regarding **claim 37**, The combination Geiger-Crowther discloses the network

appliance of claim 36, wherein the predetermined sampling rate is stored in the rules

database (see Geiger; column 3, lines 5-36).

Regarding **claim 38**, The combination Geiger-Crowther discloses the network

appliance of claim 30, wherein the sampling rate is varied over time (fig. 3, item 287;

column 8, lines 14-67).

Regarding **claim 44**, The combination Geiger-Crowther discloses the network

appliance of claim 30, wherein the rules database further comprises a prescribed delay

corresponding to the priority level (see Geiger; column 11, lines 7-62).

Regarding **claim 45**, The combination Geiger-Crowther discloses the network

appliance of claim 44, wherein the prescribed delay comprises a fixed period of time

(see Geiger; column 11, lines 7-62).

Regarding **claim 46**, The combination Geiger-Crowther discloses the network

appliance of claim 44, wherein the prescribed delay comprises delay until network

resource availability reaches a certain level (see Geiger; column 11, lines 7-62).

Regarding **claim 47**, The combination Geiger-Crowther discloses a method for

controlling distribution of network communications via a communications network, the

method comprising:

tracking a number of inbound connections for each of a plurality of communications

hosts (see Geiger; column 11, lines 3-61), and

altering a connection build process for a certain of said plurality of communications

hosts to control a flow of said certain host's network communications[see Crowther;

column 9, lines 15-27; column 8, lines 1-50].

Regarding **claim 48**, The combination Geiger-Crowther discloses the method of

claim 47, wherein the connection build process relates to a TCP connection (see

Geiger; column 17, lines 3-61).

Regarding **claim 49**, The combination Geiger-Crowther discloses the method of

claim 47, wherein the connection build process relates to an SMTP connection (see

Geiger; column 6,lines 15-57).

Regarding **claim 50**, The combination Geiger-Crowther discloses the method of

claim 47, wherein altering the connection build process comprises slowing the

connection build process for said certain host (see Geiger; column 6,lines 15-57;

column 17, lines 3-61).

Regarding **claim 51**, The combination Geiger-Crowther discloses the method of

claim 47, wherein altering the connection build process comprises stopping the

connection build process for said certain host (see Geiger; column 17, lines 3-61).

Regarding **claim 52**, The combination Geiger-Crowther discloses a system for

controlling distribution of network communications via a communications network, the

system comprising

a mail server operating within an internal communications network for distribution of

incoming network communications received via an external communications network

(see Geiger; column 5, lines 42-67; column 7, lines 4-30; fig. 1, items 102, and 106);

and

a network appliance logically positioned between the mail server and the

external communications network, the network appliance being specially configured

to selectively allocate resources of the internal communications network for delivery

of the incoming network communications to the mail server, the network appliance

being further configured to allocate resources to the incoming network

communications according to priority levels of the incoming network communications

(fig. 2, item 230; column 10, lines 32-63); [see Crowther; column 9, lines 15-27; column

8, lines 1-50].

Regarding **claim 53**, The combination Geiger-Crowther discloses the method of

claim 52, wherein the prioritized manner provides for allocation of resources to an

incoming network communication that provides for delivery of higher priority network
communications before lower priority network communications (see Geiger; column 19,
lines 53-67; column 20, lines 1-58).

Regarding **claim 54**, The combination Geiger-Crowther discloses the method of
claim 53, wherein the allocation of resources comprises allocation of network
connections (see Geiger; column 19, lines 53-67; column 20, lines 1-58).

Regarding **claim 55**, The combination Geiger-Crowther discloses a network
appliance for controlling distribution of network communications via a communications
network, the network appliance receiving incoming network communication
connections, the network appliance being capable of allocating network connections for
delivering network communications, the network appliance selectively allocating
network connections for each of a plurality of network communications in an order to
achieve a prioritization effect according to priority levels of the incoming network
communications (fig. 2, item 230; column 10, lines 32-63; column 10, lines 44-62); [see
Crowther; column 9, lines 15-27; column 8, lines 1-50].

Regarding **claim 56**, The combination Geiger-Crowther discloses the network
appliance of claim 55, the prioritization effect comprising delaying allocation of a
network connection for delivery of a first network communication having a first priority,
and allocation of the network connection for delivery of a second network
communication having a second priority higher than the first priority, allocation of the
network connection for delivery of the second network communication being performed

before allocation of the network communication for delivery of the first network communication (see Geiger; column 19, lines 53-67; column 20, lines 1-58).

Regarding **claim 57**, The combination Geiger-Crowther discloses the network appliance of claim 55, the prioritization effect comprising allocating a network connection for delivery of a relatively high priority network communication before allocating the network connection for delivery of a relatively low priority network communication (see Geiger; column 19, lines 53-67; column 20, lines 1-58).

Regarding **claim 58**, The combination Geiger-Crowther discloses the network appliance of claim 55, the prioritization effect comprising delaying allocation of a network connection for a given path to meet predetermined preference criteria (see Geiger; column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 59**, The combination Geiger-Crowther discloses the network appliance of claim 55, wherein the predetermined preference criteria provides that network communications from a certain path should not be delivered if utilization of network resources presently exceeds a predetermined threshold (see Geiger; column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 60**, The combination Geiger-Crowther discloses the network appliance of claim 55, wherein the predetermined preference criteria provides that network communications from a certain sender should not be delivered if utilization of network resources presently exceeds a predetermined threshold (see Geiger; column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 61**, The combination Geiger-Crowther discloses the network

appliance of claim 55, wherein the predetermined preference criteria provides that

network communications having a certain priority level should not be delivered if

utilization of network resources presently exceeds a predetermined threshold (see

Geiger; column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 62**, The combination Geiger-Crowther discloses a method for

controlling distribution of network communications from a sender to a receiver via a

communications network, the method comprising the steps of:

identifying a network communication intended for delivery to a recipient (col. 5, lines 58-

67; col. 6, lines 15-50);

identifying a priority level corresponding to the network communication (see Geiger;

column 10, lines 44-62); [see Crowther; column 9, lines 15-27; column 8, lines 1-50];

determining a prescribed delay for the identified priority level (see Geiger; column 11,

lines 12-45); and

delaying delivery of the network communication to the intended recipient according to

the prescribed delay (see Geiger; column 11, lines 12-45); [see Crowther; column 9,

lines 15-27; column 8, lines 1-50].

Regarding **claim 63**, The combination Geiger-Crowther discloses the method of

claim 62, wherein the identifying, determining and delaying are performed by a network

appliance capable of communicating via the communications network, the network

appliance being logically positioned between the sender and the receiver (see Geiger;

column 11, lines 7-62).

Regarding **claim 64**, The combination Geiger-Crowther discloses the method of

claim 62, wherein identifying the priority level comprises identifying a network address

of a mail system of the sender from which the network communication originated (see

Geiger; column 23, lines 5-67).

Regarding **claim 65**, The combination Geiger-Crowther discloses the method of

claim 62, wherein identifying the priority level comprises identifying a network address

of a mail system of an intermediary along a network path from the sender to the receiver

(see Geiger; column 23, lines 5-67).

Regarding **claim 66**, The combination Geiger-Crowther discloses the method of

claim 62, wherein identifying the priority level comprises identifying a domain name of

the a mail system of the sender from which the network communication originated (see

Geiger; column 23, lines 5-67).

Regarding **claim 67**, The combination Geiger-Crowther discloses the method of

claim 62, wherein identifying the priority level comprises identifying a domain name of a

mail system of an intermediary along a network path from the sender to the receiver

(see Geiger; column 23, lines 5-67).

Regarding **claim 68**, The combination Geiger-Crowther discloses the method of

claim 62, wherein identifying the priority level comprises identifying network path

information found in a header of the network communication (see Geiger; column 17,

lines 16-43).

Regarding **claim 69**, The combination Geiger-Crowther discloses the method of

claim 68, wherein identifying the network path information comprises referencing TCP

or IP packet headers of the network communication (see Geiger; column 17, lines 3-61).

Regarding **claim 70**, The combination Geiger-Crowther discloses the method of

claim 62, wherein identifying the priority level comprises identifying network path

information of a mail system having previously processed the network communication

(fig. 13; (see Geiger; column 10, lines 44-62).

Regarding **claim 71**, The combination Geiger-Crowther discloses the method of

claim 62, wherein identifying the priority level comprises identifying network path

information of a mail system having previously routed the network communication (fig.

13; column 10, lines 44-62).

Regarding **claim 72**, The combination Geiger-Crowther discloses the method of

claim 62, wherein identifying the priority level comprises identifying a sender identity

domain associated with the sender of the network communication (col. 5, lines 58-67;

col. 6, lines 15-50).

Regarding **claim 73**, The combination Geiger-Crowther discloses the method of

claim 62, wherein identifying the sender identity domain comprises referencing SMTP

header information of the network communication (see Geiger; column 6, lines 15-57).

Regarding **claim 74**, The combination Geiger-Crowther discloses the method of

claim 62, wherein identifying the priority level comprises identifying a geographic origin

of the network communication (see Geiger; column 23, lines 5-67).

Regarding **claim 75**, The combination Geiger-Crowther discloses the method of

claim 62, wherein the prescribed delay is established according to a recorded

preference of the receiver (see Geiger; column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 76**, The combination Geiger-Crowther discloses the method of

claim 62, wherein the prescribed delay is established according to a preference of an

intermediary, the intermediary being logically positioned between the sender and the

receiver for transmitting network communications from the sender to the receiver (see

Geiger; column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 77**, The combination Geiger-Crowther discloses the method of

claim 62, wherein delaying delivery of the network communication comprises controlling

allocation of network connections for delivery of network communications to cause other

network communications having priority levels higher than the network communication

to be delivered before delivery of the network communication (see Geiger; column 19,

lines 53-67; column 20, lines 1-58).

Regarding **claim 78**, The combination Geiger-Crowther discloses a method for

controlling distribution of network communications via a communications network, the

method comprising:

identifying a plurality of network communications, each having a respective

priority level (see Geiger; column 10, lines 44-62); [see Crowther; column 9, lines 15-27;

column 8, lines 1-50];

allocating network connections for delivery of network communications to

allocate network connections as a function of a respective priority level of each of the

plurality of network communications(see Geiger; column 10, lines 44-62).

Regarding **claim 79**, The combination Geiger-Crowther discloses the method of

claim 78, wherein said allocating comprises allocating a network connection to a certain

network communication having a first priority level before allocating the network

connection to another network communication having a second priority level lower than

the first priority level (see Geiger; column 10, lines 44-62).

Regarding **claim 80**, The combination Geiger-Crowther discloses the method of

claim 78, wherein said allocating comprises delaying transmission of a certain network

communication having a first priority level until after transmission of another network

communication having a second priority level higher than the first priority level (see

Geiger; column 10, lines 44-62).

Regarding **claim 81**, The combination Geiger-Crowther discloses the method of

claim 78, wherein said allocating comprises causing delivery of a certain network

communication having a first priority level to occur after delivery of another network

communication having a second priority level higher than the first priority level (see

Geiger; column 10, lines 44-62).

Regarding **claim 82**, The combination Geiger-Crowther discloses a system for

controlling distribution of network communications via a communications network, the

system comprising

a mail server operating within an internal communications network for

distribution of incoming network communications received via an external

communications network (see Geiger; column 5, lines 42-67; column 7, lines 4-30; fig.

1, items 102, and 106); and

a network appliance logically positioned between the mail server and the external

communications network, the network appliance being specially configured to

selectively allocate resources of the internal communications network for delivery

of the incoming network communications to the mail server, the network appliance

being further configured to allocate resources to the incoming network

communications to ensure that network communications received along a certain

network path are delivered at a rate that consumes no more than a certain

percentage of the resources of the internal communications network according to

priority levels of the incoming network communications (see Geiger; column 11, lines

12-45; column 25, lines 39-67); [see Crowther; column 9, lines 15-27; column 8, lines 1-

50].

Regarding **claim 83**, The combination Geiger-Crowther discloses the system of

claim 82, wherein the certain percentage is established by a predetermined preference

setting (see Geiger; column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 84**, The combination Geiger-Crowther discloses the system of

claim 83, wherein the preference setting is established by the receiver (see Geiger;

column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 85**, The combination Geiger-Crowther discloses a network

appliance for controlling distribution of network communications via an external

communications network for delivery within an internal communications network, the

network appliance being specially configured to selectively allocate resources of the

internal communications network that may be used for delivery of network

communications, the resources being selectively allocated to ensure that network

communications received along a certain network path are delivered at a rate that

consumes no more than a certain percentage of the resources of the internal

communications network according to priority levels of the incoming network

communications (see Geiger; column 11, lines 12-45; column 25, lines 39-67; fig.

3,items 291, and 292); [see Crowther; column 9, lines 15-27; column 8, lines 1-50].

Regarding **claim 86**, The combination Geiger-Crowther discloses the system of

claim 85, wherein the certain percentage is established by a predetermined preference

setting (see Geiger; column 11, lines 12-45; column 25, lines 39-67).

Regarding **claim 87**, The combination Geiger-Crowther discloses the system of

claim 86, wherein the preference setting is established by the server (see Geiger;

column 11, lines 12-45; column 25, lines 39-67).

5. **Claims 17, 19, 20, and 39-43** are rejected under 35 U.S.C. 103(a) as being

unpatentable over Geiger and Crowther, in view of Aronson et al (Aronson), U.S.

Patent No: 6,654,787 B1.

Regarding **claim 17**, the combination of Geiger-Crowther teaches the invention

substantially as claimed. Geiger fully discloses the method of controlling distribution of

claim 16. However, Geiger does not specifically disclose the method of claim 16,

wherein the characteristic comprises containing of a virus.

In the same field of endeavor, Aronson discloses "..a filter module in a communication controller that performs a virus check on incoming email messages..." [*see Aronson; column 5, lines 50-67*].

Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporated Aronson's teachings filtering emails for virus, with the teachings of Geiger, for the purpose of "*sorting messages....based on rules ...and forwarding messages sorted into one of the groups to the client ...*" as stated by Geiger in lines 29-33 of column 2. By this rationale **claim 17** is rejected.

Regarding claim 19, the combination of Geiger-Crowther-Aronson discloses the method of claim 16, wherein the characteristic comprises characterization of network communication as spam [see Geiger, column 5, lines 20-67]. The same motivation that was used for claim 17 is also valid for claim 19 [see Geiger, column 2, lines 29-33]. By this rationale, **claim 19** is rejected.

Regarding claim 20, the combination of Geiger-Crowther-Aronson discloses the method of claim 19, wherein characterization of the network communication as spam is determined according to a pattern matching technique [see Geiger, column 2, lines 29-33]. The same motivation that was used for claim 17 is also valid for claim 20 [see Geiger, column 2, lines 29-33]. By this rationale, **claim 20** is rejected.

Regarding claim 39, the combination of Geiger-Crowther-Aronson discloses the network appliance of claim 30, wherein the sender metric comprises a virus rate indicating a percentage of the network communications of the subset that carry a virus

[see Geiger, column 2, lines 29-33]. The same motivation that was used for claim 17 is also valid for claim 39 [see Geiger, column 2, lines 29-33]. By this rationale, **claim 39** is rejected.

Regarding claim 40, the combination of Geiger-Crowther-Aronson discloses the network appliance of claim 30, wherein the sender metric comprises a delivery success rate indicating the percentage of the network communications of the subset that are delivered [see Geiger, column 2, lines 29-33]. The same motivation that was used for claim 17 is also valid for claim 40 [see Geiger, column 2, lines 29-33]. By this rationale, **claim 40** is rejected.

Regarding claim 41, the combination of Geiger-Crowther-Aronson discloses the network appliance of claim 30, wherein the sender metric comprises a spam rate indicating a percentage of the network communications of the subset that are determined to be unwanted [see Geiger, column 2, lines 29-33]. The same motivation that was used for claim 17 is also valid for claim 41 [see Geiger, column 2, lines 29-33]. By this rationale, **claim 41** is rejected.

Regarding claim 42, the combination of Geiger-Crowther-Aronson discloses the network appliance of claim 41 , wherein the determination of whether a certain network communication is unwanted is determined by content- based analysis [see Geiger, column 2, lines 29-33]. The same motivation that was used for claim 17 is also valid for claim 42 [see Geiger, column 2, lines 29-33]. By this rationale, **claim 42** is rejected.

Regarding claim 43, the combination of Geiger-Crowther-Aronson discloses the network appliance of claim 41, wherein the determination of whether a certain network

communication is unwanted is determined by pattern matching [see Geiger, column 2,

lines 29-33]. The same motivation that was used for claim 17 is also valid for claim 43

[see Geiger, column 2, lines 29-33]. By this rationale, **claim 43** is rejected.

Response to Arguments

6.   Applicant's Request for Reconsideration filed on 12/12/2005, has been carefully

considered but is not deemed fully persuasive. However, because there exists the

likelihood of future presentation of this argument, the Examiner thinks that it is prudent

to address Applicants' main points of contention.

A. The Geiger patent does Claim 1 recites a method for controlling distribution of

electronic messages comprising "identifying apriority level corresponding to the

message and identifying a processing rule for the identified level. The message

is then processed in accordance with the identified rule. In other words,

messages have different priority levels, and are processed according to different

rules based on their associated priorities. Thus, messages with different priority

levels can be processed differently by a single receiver, based on their different

priority levels.

B. Applicant contends that the Geiger patent does not include associating

priority levels with messages, needless to say Geiger also fails to disclose or

suggest applying different rules to messages having different priority levels,

tracking inbound network connections and the existence of connection buil

processes, and much less "altering a connection build process for hosts for flow
control.

As to "Point A" it is the position of the Examiner that Geiger teaches the
limitations of the above mentioned claims. However, in view of Applicant's remarks,
and characterization of the claims, new prior art reference of Crowther teaches "...The
assignment of the priority level(in this case P3) for a media request is controlled by the
media gateways (e.g., media gateway 112). For example, an e-mail request from a
registered customer may be assigned a higher priority level than an e-mail request from
an unregistered user. The media gateway 112 specifies to the MQM, by messaging,
which skillset(s) to place the e-mail request (see FIG. 5, message at reference 3). The
media gateway 112 may optionally queue the request to multiple skillsets..."

As to "Point B", it is also the Examiner's position the new reference of Crowther
in combination with Geiger and Aronson teach the limitations of the claimed invention.

Examiner notes with delight that no new matter has been added and that the new
claims are supported by the application as filed. However, applicant has failed in
presenting claims and drawings that delineate the contours of this invention as
compared to the cited prior art. Applicant has failed to clearly point out patentable
novelty in view of the state of the art disclosed by the references cited that would
overcome the 103(a) rejections applied against the claims, the rejection is therefore
sustained.

Conclusion

7.   **THIS ACTION IS MADE NON-FINAL.** Any inquiry concerning this

communication or earlier communications from examiner should be directed to Jude

Jean-Gilles whose telephone number is (571) 272-3914. The examiner can normally be

reached on Monday-Thursday and every other Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, David Wiley, can be reached on (571) 272-3923. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the receptionist whose telephone number is (571) 272-

9000.

Jude Jean-Gilles
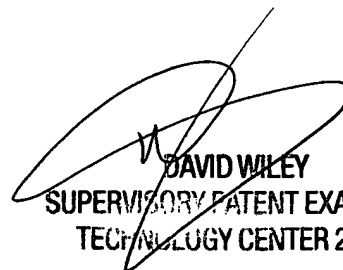
Patent Examiner

Art Unit 2143

JJG

        March 03, 2006

                                                        DAVID WILEY
                                            SUPERVISORY PATENT EXAMINER
                                            TECHNOLOGY CENTER 2100